Supreme Court, U.S.
FILED
AUG 2 2 2005
OFFICE OF THE CLERK

No. 04-1332

# In the Supreme Court of the United States

RICHARD WILL, ET AL., PETITIONERS

*v.*

SUSAN HALLOCK, ET AL.

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE SECOND CIRCUIT*

## JOINT APPENDIX

PAUL D. CLEMENT
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

*Counsel of Record*
*for Petitioners*

ALLISON M. ZIEVE
*Public Citizen Litigation Group*
*1600 20th Street, N.W.*
*Washington, D.C. 20009*
*(202) 588-1000*

*Counsel of Record*
*for Respondents*

PETITION FOR WRIT OF CERTIORARI FILED: APR. 4, 2005
CERTIORARI GRANTED: JUNE 6, 2005

TABLE OF CONTENTS


| | Page |
|---|---|
| United States court of appeals docket entries | 1 |
| United States district court docket entries | 6 |
| Complaint for damages (filed Feb. 13, 2003) | 19 |
| Plaintiffs' first amended complaint for damages (filed May 1, 2003) | 28 |
| Judgment of the United States District Court for the Northern District of New York in Docket No. 02-cv-942, dated Mar. 24, 2003 (attached to Memorandum of Law in Support of Defendant's Motion for Judgment on the Pleadings, filed May 23, 2003) | 36 |
| Order (dated Oct. 6, 2003) | 37 |
| The following opinion, decisions, and order have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari | |
| Memorandum-Decision and Order of the United States District Court for the Northern District of New York in Docket No. 02-cv-942, dated Mar. 21, 2003 (attached to Memorandum of Law in Support of Defendants' Motion for Judgment on the Pleadings, filed May 23, 2003) | 27a |
| Memorandum-Decision and Order of the United States District Court for the Northern District of New York, dated Aug. 19, 2003 | 18a |
| Opinion of the United States Court of Appeals for the Second Circuit, dated Oct. 22, 2004 | 1a |
| Order of the United States Court of Appeals for the Second Circuit denying petition for rehearing, filed Jan. 4, 2005 | 41a |

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

---

Docket No. 03-6221-CV

SUSAN HALLOCK, FERNCLIFF ASSOCIATES, INC. DOING BUSINESS AS MULTIMEDIA TECHNOLOGY CENTER, PLAINTIFFS-APPELLEES

*v.*

ROBERT C. BONNER, RICHARD WILL, DENNIS P. HARRISON, MARGARET M. JORDAN, THOMAS VIRGILIO, UNKNOWN AGENTS OF UNITED STATES CUSTOMS AND TREASURY, UNKNOWN AGENTS OF UNITED STATES JUSTICE DEPARTMENT, UNKNOWN AGENTS OF UNITED STATES POSTAL SERVICE, UNKNOWN AGENTS OF UNITED STATES MARSHAL SERVICE, JOHN & JANE DOE 1-25, DEFENDANTS-APPELLANTS

---

**DOCKET ENTRIES**

| DATE | PROCEEDINGS |
|---|---|
| 10/17/03 | Copy of notice of appeal and district court docket entries on behalf of Appellant Robert C. Bonner, Appellant Richard Will, Appellant Dennis P. Harrison, Appellant Margaret M. Jordan, Appellant Thomas Virgilio, Appellant Unknown Named Agent, Appellant Un |

| DATE | PROCEEDINGS |
|---|---|
| | Known Named Agent, Appellant Unknown Named Agent, Appellant Unknown Agent, Appellant John & Jane Doe filed. [03-6221] Form C due on 10/20/03,,. Form D due on 10/20/03,,. Filing Fee Waived [DT] |
| 10/17/03 | Copy of district court order dated 8/19/03 and endorsed by Hon. Hurd RECEIVED. [03-6221] [DT] |
| 10/17/03 | Copy of district court order dated 10/6/03 and endorsed by Hon. Hurd RECEIVED. [03-6221] [DT] |
| | * * * * * |
| 3/11/04 | APPELLANT John & Jane Doe, Unknown Named Agent, Dennis Harrison, Margaret Jordan, ET AL., brief FILED with proof of service. [TH] |
| 3/11/04 | APPELLANT John & Jane Doe, Unknown Named Agent, Dennis Harrison, Margaret Jordan, ET AL., appendix filed w/pfs. [TH] |
| 4/8/04 | APPELLEE Ferncliff Assoc, Susan Hallock, brief filed with proof of service. [TH] |
| | * * * * * |

| DATE | PROCEEDINGS |
|---|---|
| 4/27/04 | APPELLANT John & Jane Doe, Unknown Named Agent, Dennis Harrison, Margaret Jordan, ET AL.; APPELLEE Ferncliff Assoc, reply brief filed with proof of service. [TH] |
| | * * * * * |
| 10/22/04 | Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion filed. (CJJ Miner) [WD] |
| 10/22/04 | Notice to counsel Opinion filed 10/22/04. [WD] |
| 10/22/04 | Judge Marrero concurs in a separate opinion, filed. [WD] |
| 10/22/04 | Judgment filed. [WD] |
| 10/27/04 | Errata sheet re: filed. [WD] |
| 10/29/04 | APPELLANT John & Jane Doe, Unknown Named Agent, Dennis Harrison, Margaret Jordan, et al.; APPELLEE Ferncliff Assoc, motion for clarification on time to file a Petition for rehearing received. [WD] |
| 11/17/04 | Errata sheet re: filed. [WD] |

| DATE | PROCEEDINGS |
|---|---|
| 11/29/04 | Appellant Robert Bonner, Appellant Richard Will, et al motion extended time to file petition for rehearing filed with proof of service. [DB] |
| 12/3/04 | Order FILED GRANTING motion extended time by Appellant Robert Bonner, Appellant Richard Will, Appellant Dennis Harrison, Appellant Margaret Jordan, Appellant Thomas Virgilio, Appellant John & Jane Doe, Appellant Unknown Named Agent, endorsed on motion dated 11/29/2004 [DB] |
| 12/3/04 | Appellee Ferncliff Assoc, Appellant Robert Bonner, Appellant Richard Will, et al petition for rehearing en banc filed with proof of service. [WD] |
| 12/20/04 | APPELLANT John & Jane Doe, Unknown Named Agent, Dennis Harrison, Margaret Jordan, ET AL; APPELLEE Ferncliff Assoc, petition for rehearing en banc received. [WD] |
| 1/4/05 | Order FILED DENYING motion petition for rehearing en banc by Appellee Ferncliff Assoc, Appellant Robert Bonner, Appellant Richard Will, Appellant Dennis Harrison, Appellant Margaret Jordan, Appellant Thomas Virgilio, Appellant John & Jane Doe, |

| DATE | PROCEEDINGS |
|---|---|
| | Appellant Unknown Named Agent, endorsed on motion dated 12/3/2004. A Petition for rehearing having been filed by John & Doe et al, Upon Consideration thereof, it is Ordered that said petition be and it hereby is Denied. (Present: RJM, RR, CJJ, VM DJ) (For the Court, Motion Staff Counsel, AMH) [WD] |
| 1/19/05 | Judgment MANDATE ISSUED. CLOSED [MR] |
| | * * * * * |
| 6/13/05 | Writ of Certiorari GRANTED 6/6/05. The petition for writ of certiorari is granted. In addition to the Question presented by the petition, the parties are directed to brief and argue the following Question: Did the Court of Appeals have jurisdiction over the interlocutory appeal of the District Court's order denying a motion to dismiss under the FTCA's judgment bar, 28 USC Sec 2676?. [WD] |
| 6/13/05 | Notice of reinstatement on behalf of due to granting of writ of certiorari on 6/6/05. Code: M [WD] |
| 6/15/05 | Letter sent to district court recalling mandate. Due to granting of certiorari on 6/13/05. [WD] |

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

---

Civil Docket No. 5:03-cv-00195-DNH-DRH

SUSAN HALLOCK, FERNCLIFF ASSOCIATES, INC. DOING BUSINESS AS MULTIMEDIA TECHNOLOGY CENTER, PLAINTIFFS

*v.*

ROBERT C. BONNER, RICHARD WILL, DENNIS P. HARRISON, MARGARET M. JORDAN, THOMAS VIRGILIO, UNKNOWN AGENTS OF UNITED STATES CUSTOMS AND TREASURY, UNKNOWN AGENTS OF UNITED STATES JUSTICE DEPARTMENT, UNKNOWN AGENTS OF UNITED STATES POSTAL SERVICE, UNKNOWN AGENTS OF UNITED STATES MARSHAL SERVICE, JOHN & JANE DOE 1-25, DEFENDANTS

---

**DOCKET ENTRIES**

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 02/13/2003 | 1 | COMPLAINT filed; FILING FEE $ 150.00 RECEIPT # 66322; Service deadline 4/14/03 for John & Jane Doe 1-25, for UNA Agents of US Mar, for UNA Agents of USPS, for UNA Agents of US Jus, for UNA Agents of US Cus, for Thomas Virgilio, for Margaret M. Jordan, for Dennis P. |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | Harrison, for Richard Will, for Robert C. Bonner (jel) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 02/13/2003) |
| | | * * * * * |
| 04/16/2003 | 10 | Defts' MOTION to Dismiss, Hearing set for 10:00 on 6/13/03; Motion returnable before Judge Hurd in Utica, NY. ** This motion was received by the court on 5/14/03, but considered filed as of 4/16/03, pursuant to the CJRA Reporting requirements instituted March 1, 2000. ** (jt) Modified on 05/20/2003 Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/15/2003) |
| | | * * * * * |
| 05/01/2003 | 8 | AMENDED COMPLAINT by Susan Hallock, Ferncliff Associates, Service deadline 6/30/03 for John & Jane Doe 1-25, for UNA Agents of US Mar, for UNA Agents of USPS, for UNA Agents of US Jus, for UNA Agents of US Cus, for Thomas |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | Virgilio, for Margaret M. Jordan, for Dennis P. Harrison, for Richard Will, for Robert C. Bonner , amends [1-1] complaint (fce) (Entered: 05/01/2003) |
| | | * * * * * |
| 05/14/2003 | 11 | DECLARATION OF C. ROBERTS by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents of US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA Agents of US Mar, John & Jane Doe 1-25 Re: [10-1] motion to Dismiss (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/15/2003) |
| 05/14/2003 | 12 | MEMORANDUM by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents of US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA Agents of US Mar, John & Jane Doe 1-25 in support of [10-1] motion to Dismiss (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/15/2003) |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 05/14/2003 | 13 | MEMORANDUM by Susan Hallock, Ferncliff Associates in opposition to [10-1] motion to Dismiss (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/15/2003) |
| 05/14/2003 | 14 | REPLY by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents of US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA Agents of US Mar, John & Jane Doe 1-25 to response to [10-1] motion to Dismiss (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/15/2003) |
| 05/22/2003 | 15 | ANSWER by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA of US Mar (Attorney Charles E. Roberts) to Amended Complaint (jmb) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/27/2003) |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 05/22/2003 | 16 | ANSWER & AFFIRMATIVE DEFENSES: by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA of US Mar (Attorney Charles E. Roberts) to Amended Complaint (jmb) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 05/27/2003) |
| 05/23/2003 | 17 | MOTION by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents of US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA Agents of US Mar for Judgment on the Pleadings , Hearing set for 10:00 7/11/03 , Response Deadline 6/27/03 Motion returnable before Judge Hurd in Utica. (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/28/2003) |
| 05/23/2003 | 18 | MEMORANDUM by Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | Thomas Virgilio, UNA Agents of US Cus, UNA Agents of US Jus, UNA Agents of USPS, UNA Agents of US Mar in support of [17-1] motion for Judgment on the Pleadings (jt) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 05/28/2003) |
| | | * * * * * |
| 05/30/2003 | 20 | ORDER denying defts' original [10-1] motion to Dismiss as moot; pltfs' may Respond to Motion on or before 6/20/03 for [17-1] motion for Judgment on the Pleadings ; Motion Hearing is set for 10:00 am on 7/11/03 in Utica, NY before Judge Hurd, re: [17-1] motion for Judgment on the Pleadings. (signed by Judge David N. Hurd) (see) (Entered: 05/30/2003) |
| | | * * * * * |
| 06/23/2003 | 23 | Letter REPLY dd 6/20/03 by Charles Roberts, AUSA for defts Robert C. Bonner, Richard Will, Dennis P. Harrison, Margaret M. Jordan, Thomas Virgilio, UNA Agents of US Cus, UNA Agents |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | of US Jus, UNA Agents of USPS, UNA Agents of US Mar to response to [17-1] motion for Judgment on the Pleadings. (see) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 06/23/2003) |
| 06/30/2003 | 24 | Letter Brief dd 6/26/03 by Kenneth Sissel, Esq for the pltfs, in response to the USA's reply letter brief dd 6/20/03. (see) Additional attachment(s) added on 2/10/2004 (cbm,). (Entered: 07/01/2003) |
| | | * * * * * |
| 07/31/2003 | 29 | MEMORANDUM by Ferncliff Associates, Susan Hallock in opposition to [17-1] motion for Judgment on the Pleadings (jt) Additional attachment(s) added on 2/5/2004 (see,). (Entered: 08/04/2003) |
| 07/31/2003 | 30 | RESPONSE to Reply to Response by Ferncliff Associates, Susan Hallock to [17-1] motion for Judgment on the Pleadings (jt) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 08/04/2003) |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 07/31/2003 | 31 | REPLY by John & Jane Doe 1-25, UNA Agents of US Mar, UNA Agents of USPS, UNA Agents of US Jus, UNA Agents of US Cus, Thomas Virgilio, Margaret M. Jordan, Dennis P. Harrison, Richard Will, Robert C. Bonner to response to plntf's surreply to [17-1] motion for Judgment on the Pleadings (jt) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 08/04/2003) |
| | | * * * * * |
| 08/20/2003 | 37 | MEMORANDUM-DECISION and ORDER, that because pltfs' FTCA suit against the gov't was dismissed pursuant to FRCivP 12(b)(1) for lack of subject matter jurisdiction, and allowing pltfs to proceed does not offend the purpose of 276, the judgment bar statute does not bar pltfs' Bivens suit. Furthermore, under the liberal rules for notice pleading, pltfs have sufficiently stated a claim for which relief |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | may be granted; denying [17-1] motion for Judgment on the Pleadings. (signed by Judge David N. Hurd) (see) (Entered: 08/20/2003) |
| | | * * * * * |
| 09/22/2003 | 39 | ORDER TO SHOW CAUSE: by Elizabeth Riker, AUSA for the defts to Amend the Court's [37-1] Memorandum-Decision and Order Motion Hearing set for 11:30 am on 10/3/03; Response Deadline 9/30/03. ORDERED that the above named pltfs appear before this Court at the US Courthouse, Utica, NY via telephone conference on 10/3/03 at 11:30 am or as soon as counsel can be heard, to show cause why the Court should not grant defts' motion for amendment of its Memorandum-Decision and Order dd 8/20/03; that a copy of this Order together with the supporting affidavit and Memorandum of Law be served on or before 9/24/03 by facsimile and Federal Express upon Kenneth M. Sissel, Esq, atty for the pltfs; |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | that any answering affidavits and/or opposition memoranda by pltfs herein shall be filed and served on or before 9/30/03. (Signed by Judge David N. Hurd) (see) (Entered: 09/22/2003) |
| 09/22/2003 | 40 | Defts' MEMORANDUM of Law by Elizabeth Riker, AUSA for the defts in support of the [39-1] motion to Amend the Court's [37-1] Memorandum-Decision and Order. (see) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 09/22/2003) |
| 09/22/2003 | 41 | AFFIDAVIT by Elizabeth Riker, AUSA for the defts, Re: In Support of defts' [39-1] motion to Amend the Court's [37-1] Memorandum-Decision and Order. (see) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 09/22/2003) |
| 09/30/2003 | 42 | Pltfs' MEMORANDUM of LAW by Kenneth Sissel, Esq for Ferncliff Associates and Susan Hallock in opposition to [39-1] mo |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| | | tion to Amend the [37-1] Memorandum-Decision and Order. (see) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 09/30/2003) |
| | | * * * * * |
| 10/06/2003 | 46 | ORDER denying defts' [39-1] motion to Amend the Court's [37-1] Memorandum-Decision and Order. (signed by Judge David N. Hurd) Date Entered: 10/6/03 (see) (Entered: 10/06/2003) |
| 10/10/2003 | 47 | NOTICE OF INTERLOCUTORY APPEAL of [37- 1] order by John & Jane Doe 1-25, UNA Agents of US Mar, UNA Agents of USPS, UNA Agents of US Jus, UNA Agents of US Cus, Thomas Virgilio, Margaret M. Jordan, Dennis P. Harrison, Richard Will, Robert C. Bonner FILING FEE $ wv Appeal record due on 11/9/03 (jt) Additional attachment(s) added on 2/6/2004 (cbm,). (Entered: 10/15/2003) |
| | | * * * * * |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 01/27/2005 | 66 | MANDATE of U S C A: it is ordered that the Order of the district court is hereby Affirmed, therefore the # 47 Notice of Interlocutory Appeal, filed by Dennis P. Harrison, Margaret M. Jordan, Robert C. Bonner, Richard Will, Thomas Virgilio, Unknown Agents of United States Customs and Treasury, Unknown Agents of United States Justice Department, Unknown Agents of United States Postal Service, Unknown Agents of United States Marshal Service, John & Jane Doe 1-25 is dismissed. (Attachments: # 1 Slip Opinion) (Issued as a Mandate on 1/19/05) (jmb) (Entered: 02/03/2005) |
| | | * * * * * |
| 06/20/2005 | 78 | NOTICE to the District Court that a Writ of Certiorari has been granted as of 6/6/2005, therefore, the USCA is recalling the 66 USCA Mandate issued on 1/19/2005. (see) (Entered: 06/20/2005) |

| DATE | DOCKET NUMBER | PROCEEDINGS |
|---|---|---|
| 06/21/2005 | | Document # 66 USCA Mandate has been returned to the US Court of Appeals for the Second Circuit as requested in document # 78 Notice of granting of a Writ of Certiorari. (jmb) (Entered: 06/21/2005) |

* * * * *

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT, STATE OF NEW YORK

---

File No. 03-CV-0195 DNH-DRH

SUSAN HALLOCK, FERNCLIFF ASSOCIATES, INC. D/B/A MULTIMEDIA TECHNOLOGY CENTER, PLAINTIFFS

*v.*

ROBERT C. BONNER, RICHARD WILL, DENNIS P. HARRISON, MARGARET M. JORDAN, THOMAS VIRGILIO, UNKNOWN AGENTS OF UNITED STATES CUSTOMS AND TREASURY, UNKNOWN AGENTS OF UNITED STATES JUSTICE DEPARTMENT, UNKNOWN AGENTS OF UNITED STATES POSTAL SERVICE, UNKNOWN AGENTS OF UNITED STATES MARSHAL SERVICE, JOHN & JANE DOE 1-25, DEFENDANTS

---

Filed: Feb. 13, 2003

---

COMPLAINT FOR DAMAGES

COME NOW the Plaintiffs by and through their undersigned attorney and hereby file this Complaint against the Defendants by showing as follows:

1.

This action is brought pursuant to *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), *Davis* v. *Passman*, 442 U.S. 228 (1979) and Common Law. The court has

jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 2201.

2.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Robert C. Bonner, can be served at Customs Headquarters, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

3.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Richard Will, can be served at United States Customs Service, 445 Broadway, Albany, NY 12207.

4.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Dennis P. Harrison can be served at US Customs, 19 St. Johns Highway, Rouses Point, NY 12979 or at 1 Crestview Way, Rouses Point, NY 12979-1430.

5.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Margaret M. Jordan can be served at US Customs, Room 746, Leo O'Brien Federal Bldg., Albany, NY 12207.

6.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Thomas Virgilio can be served at

US Customs, Room 746, Leo O'Brien Federal Bldg., Albany, NY 12207 or at 28 Redfield Park, Clifton Park, NY 12065.

7.

Service upon Unknown Named Agents of United States Customs and Treasury, Unknown Named Agents of United States Justice Department, Unknown Named Agents of the United States Postal Service, and Unknown Named Agents of United States Marshall Service, and John and Jane Doe, 1 through 25 will be perfected upon specific identification of such Defendants in accordance in law.

8.

Richard J. Hallock and Susan C. Hallock resided at 194 Ferncliff Road, Village of Mohawk, County of Herkimer, in the State of New York at the time this cause of action accrued. Ferncliff Associates, Inc., d/b/a Multimedia Technology Center (Ferncliff), operated from offices located at 194 Ferncliff Road, Village of Mohawk, County of Herkimer, in the State of New York at the time this cause of action accrued. Ferncliff is a corporation authorized to do business in the State of New York. Susan Hallock is President and 100% stockholder of Ferncliff. A substantial part of the events or omissions giving rise to this claim occurred in the Northern District of New York. Pursuant to 28 U.S.C. § 1391, venue is therefore proper in this Court. Service may be perfected pursuant to F.R.C.P. 4(i)(2).

9.

On June 8, 2000, at approximately 9:00 A.M., under authority of a Search Warrant from the United Stated District Court, Northern District of New York, signed by Hon. David E. Peebles, United States Magistrate

Judge, Defendants Margaret M. Jordan, Thomas Virgilio, Dennis Harrison and other persons from the United States Customs, United States Treasury, United States Department of Justice, United States Postal Service, and United States Marshals Service, undertook to search the premises located at 194 Ferncliff Road, Mohawk, New York, 13407. The nature of the Search Warrant was to seize all property, contraband, instrumentalities, fruits or evidence of violation of Title 18, United States Code, §2225 and §2252A.

Neither the Hallocks nor the Plaintiffs have ever violated said Act. No action was ever brought against Plaintiffs, and so far as it known by this suit action, the matter was never presented to a Grand Jury for prosecutorial consideration or action. Defendants seized property which was the intellectual property of Plaintiffs and was not evidence of a crime as Plaintiffs were not involved in child pornography at any time or at any place.

10.

Above named Defendants seized all computer equipment, computer software, computer data, and computer hard disk drives from 194 Ferncliff Road. Additionally by nature of their being stored on computer hard disk drives, seized from the property, all Computer Software Intellectual Property, all computerized Proprietary Computer Software Design Documents, all Computerized Personal Records, all Computerized Business Records, all Computerized Accounts, Client Files, and Business as well as Technological Trade Secrets belonging to Plaintiffs, both primary and archival backups, were also seized.

11.

On September 11, 2000 and September 15, 2000, two proposed agreements were sent to Thomas F. Shannon, Esq. from the office of United States Attorney for the Northern District of New York. The signature lines bear the names of Daniel J. French, United States Attorney, Brenda K. Sannes, Assistant U.S. Attorney, Thomas Shannon, Esq., Attorney for Richard Hallock, and Richard Hallock. Both agreements contain the following language:

> "A. The computer data images obtained by the United States Customs Service from the computer and hard drives (the "images") are a complete and accurate *reproduction* [emphasis added] of the data that were stored on the computers at the time that they were seized on June 8, 2000;"

12.

On December 21, 2000 at approximately 11:00 A.M., Defendant, Dennis P. Harrison met with Richard Hallock on a street near the United States Customs Office in Albany, New York, and there Defendant Harrison transferred all computer equipment and computer hard drives seized from 194 Ferncliff Road from his vehicle to the Plaintiffs. Plaintiffs were completely without the opportunity to verify operability of the returned equipment or to determine if in fact all seized property had been returned.

13.

From June 8, 2000 to December 21, 2000, said property was in the sole custody and control of all Defendants.

14.

A. On December 21, 2000, at approximately 3:00 P.M., Richard Hallock, upon performing a full and complete review and inspection of the seized property returned by Defendant Harrison, discovered that on the 9 computer systems originally seized from 194 Ferncliff Road, Mohawk, New York, 4 had been damaged to the extent of being totally unusable. Of these, 1 computer belonging to a client of Ferncliff Associates, Inc. was returned to the client. The other 3 damaged computer systems belonged to Plaintiffs, their loss necessitating the end of normal business operations of Plaintiffs.

B. It was also discovered that of the computer hard disk drives seized, 5 had been damaged to the point of complete loss of all stored data. Stored on the hard drive disk drives had been all Computer Software Intellectual Property, all computerized Proprietary Computer Software Design Documents, all Computerized Personal Records, all Computed Business Records, all Computerized Accounts, Client Files, and Business as well as Technological Trade Secrets belonging to Plaintiffs, both primary and archival backup copies. After submission to Action Front Data Recovery Labs said data was determined to be totally destroyed.

C. It is Plaintiffs' assertion that Defendants caused total and permanent damage to the computer equipment resulting in the complete loss of all stored computer data as well as loss of computer equipment, all critical to the continued business operations of Plaintiffs. Through misuse, negli-

gent and improper handling, negligent and improper storage, negligent and improper transport, environmentally unsafe packaging and perhaps intent, Defendants destroyed property belonging to Plaintiffs while that property was in their protective care and responsibility and the property has been unrecoverable for all time.

15.

Furthermore, Defendants failed to follow established standards and procedures, which failure proximately caused the damages to Plaintiffs for which recovery of damages is sought herein.

16.

As a direct and proximate result of the acts of negligence committed by Defendants, Plaintiffs sustained serious irretrievable, ongoing pecuniary damages.

17.

Count I

Liability of Defendants for Damages to Personal Property under Common Law

Defendants have destroyed and/or converted the intellectual property belonging to Plaintiffs and destroyed the income stream derived from same. As a legal result of the actions of Defendants, Plaintiffs have suffered damages.

18.

Count II

Violation of Amendment V of the Constitution of the United State of America

Defendants violated Plaintiffs' constitutional rights as provided by Amendment V of the Constitution of the United States of America by depriving Plaintiffs of their intellectual property, without due process, and by destroying the income stream generated by same.

19.

Plaintiffs demand a trial by Jury.

20.

In the event that this Honorable Court finds that there is a want of jurisdiction, Plaintiffs pray that this court shall, in the interest of justice, transfer this action to any other court in which this action could have been brought at the time it was filed pursuant to 28 U.S.C. §1631.

WHEREFORE, Plaintiffs demand judgment for special damages in the amount of $4,421,700.00, punitive damages, general damages, and damages for Plaintiff Hallock for pain and suffering as measured by the

enlightened conscience of the finder of fact, plus costs, fees, and other expenses of this action for such other relief as the Court may deem necessary and proper.

Respectfully submitted,

/s KENNETH M. SISSEL
KENNETH M. SISSEL
Georgia State
Bar No. 649406
Attorney for Plaintiffs
Bar Roll No. 503056

Kenneth M. Sissel
Attorney at Law
746 Pleasant Hill Road
Lilburn, Georgia 30047
404/325-1244
Fax: 404/315-7568

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT, STATE OF NEW YORK

---

File No. 03-CV-0195 DNH-DRH

SUSAN HALLOCK, FERNCLIFF ASSOCIATES, INC. D/B/A MULTIMEDIA TECHNOLOGY CENTER, PLAINTIFFS

*v.*

ROBERT C. BONNER, RICHARD WILL, DENNIS P. HARRISON, MARGARET M. JORDAN, THOMAS VIRGILIO, UNKNOWN AGENTS OF UNITED STATES CUSTOMS AND TREASURY, UNKNOWN AGENTS OF UNITED STATES JUSTICE DEPARTMENT, UNKNOWN AGENTS OF UNITED STATES POSTAL SERVICE, UNKNOWN AGENTS OF UNITED STATES MARSHAL SERVICE, JOHN & JANE DOE 1-25, DEFENDANTS

---

Filed: May 1, 2003

---

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES

COME NOW the Plaintiffs' by and through their undersigned attorney and hereby file this Plaintiffs' First Amended Complaint for Damages against the Defendants by showing as follows:

1.

This action is brought pursuant to *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and *Davis* v. *Passman*,

422 U.S. 228 (1979). The court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 2201.

2.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Robert C. Bonner, can be served at Customs Headquarters, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

3.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Richard Will, can be served at United States Customs Service, 445 Broadway, Albany, NY 12207.

4.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Dennis P. Harrison can be served at US Customs, 19 St. Johns Highway, Rouses Point, NY 12979 or at 1 Crestview Way, Rouses Point, NY 12979-1430.

5.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Margaret M. Jordan can be served at US Customs House, Hoboken, NJ 07030.

6.

Pursuant to Rule 4 FRCP and New York State Consolidated Laws, Civil Practice Law and Rules, Article 3, Defendant, Thomas Virgilio can be served at Customs

Headquarters, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

7.

Service upon Unknown Named Agents of United States Customs and Treasury, Unknown Named Agents of United States Justice Department, Unknown Named Agents of the United States Postal Service, and Unknown Named Agents of United States Marshall Service, and John and Jane Doe, 1 through 25 will be perfected upon specific identification of such Defendants in accordance with law.

8.

Richard J. Hallock and Susan C. Hallock resided at 194 Ferncliff Road, Village of Mohawk, County of Herkimer, in the State of New York at the time this cause of action accrued. Ferncliff Associates, Inc., d/b/a Mutlimedia Technology Center (Ferncliff), operated from offices located at 194 Ferncliff Road, Village of Mohawk, County of Herkimer, in the State of New York at the time this cause of action accrued. Ferncliff is a corporation authorized to do business in the State of New York. Susan Hallock is President and 100% stockholder of Ferncliff. A substantial part of the events or omissions giving rise to this claim occurred in the Northern District of New York. Venue is proper in this Court. Service may be perfected pursuant to F.R.C.P. 4(i)(2).

9.

On June 8, 2000, at approximately 9:00 A.M., under authority of a Search Warrant from the United Stated District Court, Northern District of New York, signed by Hon. David E. Peebles, United States Magistrate Judge, Defendants Margaret M. Jordan, Thomas

Virgilio, Dennis Harrison and other persons from the United States Customs, Untied States Treasury, United Stated Department of Justice, United States Postal Service and United States Marshals Service, undertook to search the premises located at 194 Ferncliff Road, Mohawk, New York, 13407. The nature of the Search Warrant was to seize all property, contraband, instrumentalities, fruits or evidence of violation of Title 18, United States Code, §2225 and §2252A.

Neither the Hallocks nor the Plaintiffs have ever violated said Act. No action was ever brought against Plaintiffs, and so far as it known by this suit action, the matter was never presented to a Grand Jury for prosecutorial consideration or action. Defendants seized property which was the intellectual property of Plaintiffs and was not evidence of a crime as Plaintiffs were not involved in child pornography at any time or at any place.

10.

Above named Defendants seized all computer equipment, computer software, computer data, and computer hard disk drives from 194 Ferncliff Road. Additionally by nature of their being stored on computer hard disk drives, seized from the property, all Computer Software Intellectual Property, all computerized Proprietary Computer Software Design Documents, all Computerized Personal Records, all Computerized Business Records, all computerized Accounts, Client Files, and Business as well as Technological Trade Secrets belonging to Plaintiffs, both primary and archival backups, were also seized.

11.

On September 11, 2000 and September 15, 2000, two proposed agreements were sent to Thomas F. Shannon, Esq. from the office of United States Attorney for the Northern District of New York. The signature lines bear the names of Daniel J. French, United States Attorney, Brenda K. Sannes, Assistant U.S. Attorney, Thomas Shannon, Esq., Attorney for Richard Hallock, and Richard Hallock. Both agreements contain the following language:

> "A. The computer data images obtained by the United States Customs Service from the computer and hard drives (the "images") are a complete and accurate *reproduction* [emphasis added] of the data that were stored on the Computers at the time that they were seized on June 8, 2000;"

12.

On December 21, 2000 at approximately 11:00 A.M., Defendant, Dennis P. Harrison met with Richard Hallock on a street near the United States Customs Office in Albany, New York, and there Defendant Harrison transferred all computer equipment and computer hard drives seized from 194 Ferncliff Road from his vehicle to the Plaintiffs. Plaintiffs were completely without the opportunity to verify operability of the returned equipment or to determine if in fact all seized property had been returned.

13.

From June 8, 2000 to December 21, 2000, said property was in the sole custody and control of all Defendants.

14.

A. On December 21, 2000, at approximately 3:00 P.M., Richard Hallock, upon performing a full and complete review and inspection of the seized property returned by Defendant Harrison, discovered that of the 9 computer systems originally seized from 194 Ferncliff Road, Mohawk, New York, 4 had been damaged to the extent of being totally unusable. Of these, 1 computer belonging to a client of Ferncliff Associates, Inc. was returned to the client. The other 3 damaged computer systems belonged to Plaintiffs, their loss necessitating the end of normal business operations of Plaintiffs.

B. It was also discovered that of the computer hard disk drives seized, 5 had been damaged to the point of complete loss of all stored data. Stored on the hard drive disk drives had been all Computer Software Intellectual Property, all computerized Proprietary Computer Software Design Documents, all Computerized Personal Records, all Computed Business Records, all Computerized Accounts, Client Files, and Business as well as Technological Trade Secrets belonging to Plaintiffs, both primary and archival backup copies. After submission to Action Front Data Recovery Labs said data was determined to be totally destroyed.

C. It is Plaintiffs' assertion that Defendants intentionally caused total and permanent damage to the computer equipment resulting in the complete loss of all stored computer data as well as loss of computer equipment, all critical to the continued business operations of Plaintiffs.

15.

As a direct and proximate result of the acts committed by Defendants, Plaintiffs sustained serious irretrievable, ongoing pecuniary damages.

16.

Count I

Violations of Amendment V of the Constitution of the United States of America

Defendants violated Plaintiffs' constitutional rights as provided by Amendment V of the Constitution of the United States of America by intentionally depriving Plaintiffs of their intellectual property, without due process, and by destroying the income stream generated by same.

17.

Plaintiffs demand a trial by Jury.

18.

In the event that this Honorable Court finds that there is a want of jurisdiction, Plaintiffs pray that this court shall, in the interest of justice, transfer this action to any other court in which this action could have been brought at the time it was filed pursuant to 28 U.S.C. §1631.

WHEREFORE, Plaintiffs demand judgment for special damages in the amount of $4,421,700.00, punitive damages, general damages, and damages for Plaintiff Hallock for pain and suffering as measured by the enlightened conscience of the finder of fact, plus costs,

fees, and other expenses of this action for such other relief as the Court may deem necessary and proper.

Respectfully submitted,

/s KENNETH M. SISSEL
KENNETH M. SISSEL
Georgia State
Bar No. 649406
Attorney for Plaintiffs
Bar Roll No. 503056

Kenneth M. Sissel
Attorney at Law
746 Pleasant Hill Road
Lilburn, Georgia 30047
404/325-1244
Fax: 404/315-7568

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

---

Case Number: 1:02-CV-942

SUSAN HALLOCK, ET AL., PLAINTIFFS

*v.*

UNITED STATES OF AMERICA,
DEFENDANT

---

Filed: Mar. 24, 2003

---

**JUDGMENT IN A CIVIL CASE**

☐ Jury Verdict. This action came before the Court for a jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the First Restated and Amended Complaint for Damages is DISMISSED pursuant to the Order of Judge David N. Hurd dated 3/21/03.

March 24, 2003 — Date

LAWRENCE K. BAERMAN — Clerk

/s/
(By) Deputy Clerk Patricia L. Maguire

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT, STATE OF NEW YORK

---

No. 03-CV-195

SUSAN HALLOCK, FERNCLIFF ASSOCIATES, INC.
DBA MULTIMEDIA TECHNOLOGY CENTER, PLAINTIFFS

*v.*

ROBERT C. BONNER, RICHARD WILL, DENNIS P.
HARRISON, MARGARET M. JORDAN, THOMAS VIRGILIO,
UNKNOWN AGENTS OF UNITED STATES CUSTOMS AND
TREASURY, UNKNOWN AGENTS OF UNITED STATES
JUSTICE DEPARTMENT, UNKNOWN AGENTS OF UNITED
STATES POSTAL SERVICE, UNKNOWN AGENTS OF
UNITED STATES MARSHAL SERVICE, AND JOHN & JANE
DOE 1-25, DEFENDANTS

---

APPEARANCES

OF COUNSEL

KENNETH M. SISSEL ESQ.
Attorney for Plaintiffs
746 Pleasant Hill Road
Lilburn, GA 30047

HONORABLE GLENN T. SUDDABY, ESQ.
United States Attorney
100 South Clinton Street
P.O. Box 7198
Syracuse, New York 13261

ELIZABETH S. RIKER, ESQ.
CHARLES E. ROBERTS, ESQ.
Assistant United States Attorneys

DAVID N. HURD
United States District Judge

**ORDER**

Defendants have moved pursuant to an Order to Show Cause (Doc. No. 39) to amend the Memorandum Decision and Order of August 20, 2003 (Doc. No. 37) to certify it for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Plaintiffs oppose.

Oral argument was heard on October 3, 2003. Decision was reversed.

Defendants have failed to cite even one case–Circuit or District Court–in which a prior FTCA judgment dismissing a complaint for lack of subject matter jurisdiction would bar a subsequent *Bivens* action. Therefore, the defendants have failed to establish an essential element of certification, to wit: "that such an order is substantial ground for difference of opinion." 28 U.S.C. § 1292(b).

This would not, of course, bar an appeal as of right under the collateral order doctrine, if it is applicable.

Therefore, it is ORDERED that the Defendant's motion is DENIED.

IT IS SO ORDERED

/s/
United States District Judge

Date: October 6, 2003
Utica, New York.